IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATION (BAIL) NO.104 OF 2007

Shri Reginald Silveira,
aged 28 years, and resident
of House no.3/31, Tivy Waddo,
Calangute, Bardez Goa. Applicant

V e r s u s

1. State of Goa
(through the Police Inspector
In Charge, Calangute Police
Stateion, Bardez, Goa. Respondents

Mr. Zeller De Souza, Advocate for the Applicant.

Ms. Winnie Coutinho, Public Prosecutor for the Respondent.

CORAM: N. A. BRITTO, J.

DATE: 14th June, 2007

ORAL JUDGMENT

1. Heard Shri De Souza, the learned Counsel on behalf of the applicant and Ms. Winnie Coutinho, the learned Public Prosecutor on behalf of the respondent.

2. The applicant herein is involved in crime No.32/2007 which has been registered against him and others under sections 379, 427 r/w 149 I.P.C., in respect of an incident which took place on 19.4.2007. The applicant approached the Court of Sessions with application for anticipatory bail dated 23.4.2007 and the same came to be dismissed on 30.4.2007.

3. The applicant thereafter approached this Court on 3.5.2007 and thereafter on account of ensuing vacation and by consent of the parties, the application came to be heard today.

4. Although the crime has been registered against the applicant and others under sections 379, 427 r/w 149 I.P.C., the fact remains that the allegation against the applicant is that he alongwith 50 other persons forcibly took two fishing boats bearing nos.MFR/168 and MFR/169 with fish and caused damage to the fishing equipments and thus caused loss of Rs.5,00,000/-. It is submitted on behalf of the applicant, that the incident took place because of a rivalry between canoe owners and fishing trawler owners. It is also submitted that the applicant belongs to the group of fishing trawler owners while the complainant belongs to the group of canoe owners. However, these submissions are not reflected in the complaint filed.

5. It is the further submission of the learned Counsel on behalf of the applicant that because of the rivalry the owner of said canoes namely Shri Uddhav Gokarnekar has grounded the said canoes and which have now drifted from the place they were grounded. Learned advocate further submits that the offences essentially being punishable with three and two years respectively, they are not serious in nature and, therefore, the applicant should be entitled to anticipatory bail. As regards this aspect, the learned Sessions Judge has observed that there are statements of eye witnesses

who have seen the incident and informed the complainant to lodge a complaint subsequently and thus there is direct evidence against the applicant regarding his involvement and his contention that he is innocent cannot be accepted.

6. The allegation that the applicant alongwith 50 others forcibly took away both the said boats/canoes is a serious allegation notwithstanding the fact that a case against the applicant and others has been registered, interalia, only under section 379 I.P.C. It is contention of the respondent that the presence of the applicant is necessary in order to recover the said boats at the instance of the applicant and also to arrest the remaining accused. It is the submission of the learned Counsel, on behalf of the applicant, that in the reply filed dated 23.4.200, it is not stated that the presence of the applicant is necessary in custody to recover the said boats. Only because there is no such averment in the reply filed it does not mean that the presence of the applicant is not required in custody for further investigation. In fact it has been submitted by the learned Public Prosecutor that the presence of accused is required in police custody to facilitate the recovery of the boats and names of other accused. Seriousness of the offence and the need for custodial interrogation are two important factors to be considered at the stage of considering an application for the grant of anticipatory bail. Whether the said two boats are grounded at a particular place or to recover the same, the

presence of the applicant in custody would be essential. It is well settled that custodial interrogation is more result oriented than questioning a suspect who is armed with a favourable order under Section 438. Considering the facts of the case I find that there is material on record to show the involvement of the accused in the commission of the offences which are of serious nature. The grant of bail will certainly prejudice the investigations by operating as a wall between the police and the accused. Custodial interrogation is necessary in this case to recover the property stolen as well as the names of accused. Hence the application is hereby rejected.

N. A. BRITTO, J.

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